

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

## **MEMORANDUM AND ORDER**

This matter is before the Court on plaintiff's pro se motions for discovery by subpoena duces tecum, and to stay these proceedings.

## **Motion for Subpoena Dues Tecum**

In his motion for subpoena dues tecum, plaintiff requests that the Court “issue a Discovery Order by Subpoena Dues Tecum,” ordering defendants to produce certain institutional policies and employment records. Plaintiff’s motion appears to be an end-run around the discovery deadline and this Court’s Order dated January 16, 2008.

Under the original Case Management Order, discovery was set to close in this case on January 7, 2008. On December 17, 2007, plaintiff moved that the Court compel defendants to produce certain documents, many of which are the same ones he is now requesting the Court order be subpoenaed. Defendants opposed plaintiff's motion to compel on the merits. They argued, among other things, that the documents requested were "closed records," and their disclosure would be a security breach. The Court did not decide the motion on the merits, but rather, in its January 16, 2008 Order, the Court denied the motion without prejudice, noting plaintiff had not complied with Local Rule Rule 3.04(A). In its Order, the Court suggested that plaintiff write defendants in an

attempt to resolve the dispute. If the dispute remained unresolved, the Court noted plaintiff should file a second motion to compel with copies of the written correspondence evidencing his compliance with Local Rule 3.04(A), and copies of both his discovery request(s) and the defendants' response(s). In this same Order, the Court also granted plaintiff's motion to extend the discovery deadline to January 22, 2008.

Plaintiff did not file a second motion to compel nor did he request that the Court further extend the discovery deadline. Defendants filed for summary judgment on February 7, 2008. Plaintiff responded, following two extensions of time, on May 1, 2008. Defendants were also given an extension of time to reply, and they filed their reply memorandum on May 23, 2008. The motion for summary judgment is now fully briefed and ready for disposition. For numerous reasons, including the fact that the motion is untimely as discovery is closed in this matter, the Court will deny plaintiff's motion for discovery by subpoena duces tecum.

### **Motion To Stay Proceeding**

Plaintiff has also moved that the Court stay these proceedings pursuant to Rule 62 of the Federal Rules of Civil Procedure. Rule 62 pertains to staying proceedings to enforce a judgment, which is not applicable to the present dispute. In his motion, plaintiff states that a stay is necessary because he anticipates a need to respond to "any new allegations" raised by defendants in their reply in support of summary judgment. Furthermore, plaintiff also states that he anticipates the need for time to review the documents, should the Court grant his motion for discovery.

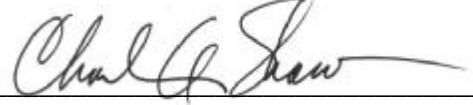
First, plaintiff is not entitled to respond to defendants' reply as a matter of right; he must request leave of Court to file a surresponse. See Local Rule 4.01(c). Second, as the Court will deny

plaintiff's request for discovery by subpoena dues tecum, he does not need additional time to review documents.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion for discovery by subpoena dues tecum is **DENIED**. [Doc. 42]

**IT IS FURTHER ORDERED** that plaintiff's motion to stay proceedings is **DENIED**. [Doc. 43]



---

**CHARLES A. SHAW**  
**UNITED STATES DISTRICT JUDGE**

Dated this 9th day of June, 2008.